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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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Federal Communications Commission  
Office of Secretary

In the Matter of

QUALCOMM Incorporated

Petition for Declaratory Ruling that OET-69  
is Acceptable To Demonstrate Compliance  
with Section 27.60

WT Docket No. 05-7

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**COMMENTS IN SUPPORT OF THE QUALCOMM  
PETITION FOR DECLARATORY RULING**

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February 17, 2005

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Aloha Partners, L.P. ("Aloha")<sup>1</sup>, by counsel, hereby provides these Comments in support of the captioned Petition for Declaratory Ruling ("Petition") filed by QUALCOMM Incorporated, ("QUALCOMM") on January 10, 2005. By them, Aloha urges the Commission to promptly grant on the QUALCOMM Petition, and to then act promptly on associated requests for waiver of 47 C.F.R. § 27.60

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<sup>1</sup> Aloha is the largest of the lower Band 700 MHz licensees. Aloha currently holds, or has authority to hold, 700 MHz licenses covering more than 60% of the nation's population.

## I. INTRODUCTION

The QUALCOMM Petition demonstrates that 700 MHz licensees are desirous of providing the types of new and innovative services that the Commission envisioned when it allocated the spectrum. In order to permit the introduction of such service, prior to the completion of the DTV transition and without interfering with incumbent broadcasters, QUALCOMM requests a ruling on these three matters:

- (a) That the Office of Engineering and Technology Bulletin No. 69 (“OET-69”), also known as “Longley-Rice Methodology for Evaluating TV Coverage and Interference,” is an acceptable method of demonstrating compliance with 47 C.F.R. § 27.60;
- (b) That the Commission’s existing de minimis standard of 2% be applied in the context of assessing compliance with 47 C.F.R. § 27.60; and
- (c) That the Commission adopt streamlined processing procedures, including certain rebuttable presumptions, be applied when assessing compliance with 47 C.F.R. § 27.60.

For the reasons set forth below, Aloha urges the Commission to provide each of the requested rulings.

## II. DISCUSSION

### A. OET-69 Should Be Recognized As An Acceptable Interference Protection Standard.

By QUALCOMM’s first request, it asks only that the Commission acknowledge the applicability of already-recognized standard to Section 27.60 waivers. Use of OET-69 makes eminent sense for many reasons. First, it is a recognized standard upon which the Commission

has written and with which Commission staff has a good working knowledge. Second, it is a standard that the broadcasting community is intimately familiar with, and has been used to evaluate applications for digital LPTV and TV translator stations. Lastly, it is particularly appropriate for analyzing the technology that QUALCOMM proposes to deploy, since it is similar to LPTV.

Aloha urges the Commission to make this ruling requested by QUALCOMM. By confirming the applicability of OET-69, the Commission will remove one possible basis for argument regarding requests for waiver of Section 27.60. In this regard, the Commission should make clear that while OET-69 is an acceptable methodology to assess interference, it is not the only acceptable methodology. Others, such as the Stanks Report<sup>2</sup>, should also be recognized as being acceptable.

**B. The 2% De Minimis Standard Should Be Applied**

Long ago the Commission recognized that when virtually any new service is introduced in a given location, there is some theoretical risk of some interference. The Commission also recognized that, unless there is some practical threshold of interference that will be tolerated, innovation would be effectively stifled. Accordingly, a 2% of the population threshold was adopted and used in assessing the impact of new entrants on existing broadcasters. Advanced Television Systems and their Impact Upon the Existing Television Broadcaster Service, 13 FCC

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<sup>2</sup> FCC/OET TM87-1 (April 1, 1996), Daniel J. Stanks

Rcd 1418 (1998). That Threshold reflects (a) the benefits to the public of alternative services being available and (b) the realization that 2% of the total population translates into far less than 2% on the broadcast recipients, because only a fraction (estimated to be less than 10% nationwide) of the viewer public receives broadcasting signal over-the-air.

The Commission's existing 2% interference threshold should be applied here, as QUALCOMM requests. It presents the proper tradeoff between protecting incumbents and permitting new entry. In fact, given that less than 10% of the population actually receives broadcast signal over-the-air, the actual impact upon reception is likely to be under .5%

C. **The Commission Should Adopt Processing Procedures for Requests for Waiver of Section 27.60**

At present, there are over 700 separate licenses for Lower Band 700 MHz facilities. Many of those are held in areas where incumbent broadcasters are licensed temporarily on a co-channel or adjacent channel basis. As a result, the Commission should expect a significant number of requests for waiver of Section 27.60 to be filed. It is in this context, that QUALCOMM properly urged the Commission to adopt processes that would permit such applications to be handled in an efficient manner.

Specifically, QUALCOMM proposed two processes, both of which are eminently reasonable. The first is an expedited process: 14 day protest period following public notice and automatic grant within 21 days in the event no challenges are filed to the Application. This process is already in use by the Wireless Telecommunications Bureau in certain services and has proven to be most efficient. See Petition for Forbearance from Section 310 of the

Communications Act, 13 FCC Rcd 6293. The Commission should utilize its proven successful expedited process in this context also.

QUALCOMM's second processing proposal involves the use of a rebuttable presumption in favor of the interference showing presented. The Commission has already applied this same type of presumption in the Upper 700 MHz Band. Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules, 15 FCC Rcd 20845 (2000). As QUALCOMM explained in its Petition, in establishing presumptions in the Upper 700 MHz Bands, the Commission acknowledged that such action is both consistent with Congressional objectives and would facilitate the transition to DTV without undue loss of broadcast service. *Id.*; Petition at 24-25.

The very same factors that caused this to be good policy in the Upper 700 MHz band are equally applicable to Lower 700 MHz. The fact that there are numerous Lower 700 MHz licensees and an expected large number of waiver requests simply provide additional reason to apply a presumption in favor of the interference showing presented.

**D. Grant of The Petition Would Facilitate the Provision of New And Exciting Services**

As discussed below, 700 MHz spectrum is ideal for provision of the type of service that QUALCOMM envisions, and for broadband service generally. In fact, grant of QUALCOMM Petition would be consistent with recommendations of the Commission's Wireless Broadband Access Task Force (the "Task Force") to facilitate the use of 700 MHz Band spectrum during the DTV transition. While a full test of the Task Force Report is not yet available, a summary of the Report includes the following policy recommendation:

Given that spectrum in the 700 MHz band is ideal for wireless broadband services, expedite the transition of the Digital Television (DTV) spectrum for advanced wireless services and public safety, *and facilitate its use during the interim period.* [emphasis added].<sup>3</sup>

A related FCC News Release indicates that the Task Force also recommends that the Commission consider “additional mechanisms for allowing 700 MHz channel to be used for wireless broadband serves before the completion of the DTV transition.”<sup>4</sup>

Grant of the QUALCOMM Petition would create such an “additional mechanism” by allowing QUALCOMM and other 700 MHz licensees to rapidly deploy advanced wireless facilities in areas where an engineering study based on OET-69 demonstrates that they can coexist with incumbent TV/DTV operations.

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<sup>3</sup> Overview of the Wireless Broadband Access Task Force Report, “Connected & On the Go: Broadband Goes Wireless” (rel. February 10, 2005) (“*Task Force Reports Overview*”) at p. 12. The *Task Force Report Overview* is available online at [http://hraunfoss.fcc.gov/edocs\\_public/attachement/DOC-256693A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachement/DOC-256693A1.pdf)

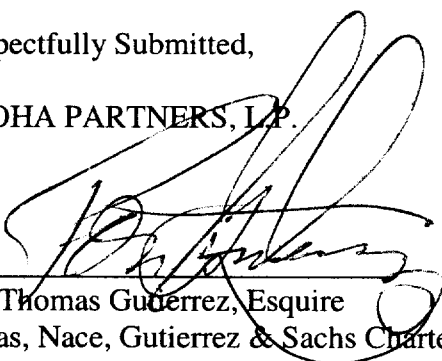
<sup>4</sup> See News Release, “FCC Task Force Recommends Actions to Speed the Rollout of Wireless Broadband Services to Consumers Across America,” (rel. February 10, 2005).

### III. CONCLUSION

The Commission should act promptly on the QUALCOMM Petition – and grant it. Grant would serve the public interest by facilitating the availability of new and exciting service offerings, and would do so without interfering with existing broadcasters.

Respectfully Submitted,

ALOHA PARTNERS, L.P.



By: Thomas Gutierrez, Esquire  
Lukas, Nace, Gutierrez & Sachs Chartered  
It's Attorney

February 17, 2004



**CERTIFICATE OF SERVICE**

I, David Crawford, do hereby certify that on this 17th day of February, 2005, I caused copies of the "COMMENTS IN SUPPORT OF THE QUALCOMM PETITION FOR DECLARATORY RULING" to be served upon the following:

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